United Nations A/HRC/33/42/Add.4

General Assembly

Distr.: General
16 September 2016

English only

Human Rights Council
Thirty-third session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the Rights of Indigenous Peoples on the human rights situation of the Sámi people in the Sápmi region in Norway, Sweden and Finland

Addendum

Comments of the Government of Norway to the report of the Special Rapporteur*

* The document is circulated as received.

GE.16-16038(E)
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1. We wish to thank the Special Rapporteur on the rights of indigenous peoples for the opportunity to submit further comments in an addendum to the report.

2. The purpose of this addendum is to highlight and comment on a few issues pertaining to the legal framework applicable to the indigenous people in Norway, and to clarify some factual misconceptions. A more comprehensive list of Norway's comments to the preliminary report was submitted in our letter to the Special Rapporteur of 18 July 2016.

1. Consultations and free, prior and informed consent

3. The ILO Convention No. 169 article 6 establishes a duty to consult the indigenous peoples whenever consideration is being given to legislative or administrative measures which may affect them directly. The consultations carried out shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures. However, article 6 does not entail a duty to *obtain* such agreement or consent.

4. The United Nations Declaration on the Rights of Indigenous Peoples is not a legally binding document, but provides important guidelines and sets a standard of achievement to be pursued. Article 19 in the declaration declares that states should consult in good faith *in order to obtain* a free, prior and informed consent. The declaration should be applied in accordance with international law. The scope of article 19 must therefore be determined on the basis of interpretations of similar consultation obligations in other international legal instruments. Reference is also made to Norway's *Explanation of Vote* to the Declaration:

"…The recognition of the right of self-determination referred to in this Declaration requires that indigenous peoples have full and effective participation in a democratic society and in decision-making processes relevant to the indigenous peoples concerned. Several articles in the Declaration specify how the right to self-determination may be exercised. The Declaration emphasises that the right to self determination shall be exercised in conformity with international law. Consultations with the peoples concerned is one of the measures outlined in the Declaration. As a state party to ILO-Convention no. 169, Norway has implemented the consultation requirements specified in that convention. Self-determination is furthermore exercised through the Sami Parliament, which is an elected body with decision-making and consultative functions within the framework of the applicable legislation. The Government has also signed an agreement with the Sami Parliament which sets out procedures for consultations between the government and the Sami Parliament."

5. Measures whose impact amounts to a denial of the right of a community to enjoy its own culture are incompatible with the International Covenant on Civil and Political Rights (ICCPR) article 27. We are familiar with the Human Rights Committee's *Views - Communication No. 1457/2006, Ángela Poma Poma v. Peru*. In this case the Human Rights Committee stated that in their view the admissibility of measures which substantially compromise or interfere with the culturally significant economic activities of a minority or indigenous community would require a free, prior and informed consent of the members of the community.

6. The statement from the Human Rights Committee relates to measures which substantially compromise or interfere with culturally economic activities of significant importance for indigenous communities. However, a general requirement to obtain a free, prior and informed consent (right to "veto") cannot be derived from the ICCPR article 27.

2. The Finnmark Commission

7. The Finnmark Commission has identified usage rights for Sami reindeer herders in all fields in which it has finished its investigations so far. Reindeer herding in Finnmark (as well as in the other areas traditionally occupied or used by the Sami) is an industry exclusive to people belonging to the Sami people, and the industry is generally regarded as a fundamental part of Sami culture. The right to reindeer herding in a particular area encompasses not only the right to grazing, but also inter alia rights to fishing and hunting, and to construct railings, cabins and other necessary structures.

8. The areas in Finnmark in which usage rights for Sami reindeer herders have been identified or will be identified in future reports by the Finnmark Commission, will presumably constitute a very substantial area in total. It is estimated that about 80 percent of the land territory in the northern part of Norway (Sør-Trøndelag to Finnmark) is being used for Sami reindeer herding.

9. The Finnmark Commission has identified collective rights for members in local communities in several areas. Although these rights are often not more extensive than the rights granted to all inhabitants in Finnmark by the Finnmark Act, they often enjoy stronger legal protection against inter alia dispositions by the land owner than the rights granted (solely) by the present wording of the Finnmark Act.

10. It follows from Section 29 of the Finnmark Act that the Finnmark Commission shall investigate rights of use and ownership "on the basis of current national law". The wording "current national law" (rather than "Norwegian law") was chosen to underline that Sami customs and Sami opinions of law should be taken into due regard. This was – and still is – in accordance with the principles established by the Norwegian Supreme Court in cases concerning land rights in areas traditionally occupied or used by the Sami. Disputes following the reports by the Commission may be brought before the Uncultivated Land Tribunal for Finnmark and – subsequently – the Norwegian Supreme Court, both of which will also decide on the case according to current national law.

11. The Norwegian Government is of the opinion that current national law is in accordance with Norway's current obligations under international law, including Article 8 of ILO Convention no 169.